

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

June 28, 2011

In the Matter of MILLER, Minors.

No. 300562

Genesee Circuit Court

Family Division

LC No. 08-124107-NA

Before: METER, P.J., and CAVANAGH and SERVITTO, JJ.

PER CURIAM.

Respondent appeals of right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

The trial court did not clearly err in finding at least one statutory ground for termination established by clear and convincing evidence or in determining that termination of respondent's parental rights was in the children's best interests. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991); MCL 712A.19b(5); MCR 3.977(K).

On appeal, respondent accurately points out that the conditions that led to adjudication with respect to him could not continue to exist because he was not a legal father at the time of adjudication, the trial court took jurisdiction over the children based on the mother's pleas to allegations concerning only her, and the trial court subsequently struck his name from the original petition regarding the older child. Therefore, we find that termination based on subsection (c)(i), at least with regard to the older child, was not proper and the trial court clearly erred with respect to that section. However, this Court should affirm the trial court's decision if it finds clear and convincing evidence of any statutory grounds, regardless of whether the court erred in finding sufficient evidence under other statutory grounds. *In re Sours*, 459 Mich 624, 632, 640-641; 593 NW2d 520 (1999).

The trial court did not clearly err in relying on subsection (g) as a statutory ground for terminating respondent's parental rights. With respect to the older child, respondent had been in a relationship with the child's mother who was abusing substances, living in completely deplorable and unsafe conditions, and neglecting the child. Given his continued relationship with the mother, as evidenced by the fact that he was the putative father of the younger child, respondent must have known the existence of these conditions yet apparently did nothing to ensure that the oldest child was placed in better circumstances. The youngest child, who bore his surname, tested positive for THC at birth.

Respondent also did not provide for the children's well-being through either financial or emotional support. It took him approximately 15 months after the older child was in the temporary care of the court to sign an affidavit of parentage with regard to her, and he never established legal paternity of the younger child.

In addition, respondent did not substantially comply with the parent agency agreement. In fact, he only minimally complied with two of the requirements. He completed a substance abuse assessment but completed only two out of 16 possible substance abuse screens. He visited with the older child approximately half of the scheduled times but apparently did not visit with the younger child. Although respondent was incarcerated during a majority of the time the case was open, he made only minimal effort to comply during the time he was not incarcerated. He did not stay in contact with the agency, acquire suitable housing for himself and the minor children, provide household bills showing he had working utilities, document legal income, participate in parenting classes, participate in random drug screens, and participate in domestic violence and anger management classes. Furthermore, he did not provide an alternate plan for care and custody of the minor children. His mother made contact with the agency on a couple of occasions inquiring about the placement of the older minor child but did not ask that the child be placed with her and made no inquiry regarding the younger child. The evidence was clear and convincing and more than sufficient to establish that respondent did not provide proper care and custody of the minor children and was not likely to do so within a reasonable time considering the children's ages.

Respondent argues that the trial court relied on inadmissible hearsay evidence regarding his incarceration and that there was no evidence regarding the ages of the children. Respondent did not object to any evidence presented at trial, and failure to object results in a waiver of the right to raise the issue on appeal. *People v Coons*, 158 Mich App 735, 740; 405 NW2d 153 (1987). Further, the facts surrounding respondent's incarceration and the ages of the minor children were matters of public record. Finally, even if testimony regarding respondent's incarceration was inadmissible hearsay, we find that any such error was harmless because the trial court did not rely on respondent's incarceration as the basis for the termination of respondent's parental rights. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2 472 (2000).

Respondent also argues that he was not provided an attorney and did not receive services while incarcerated. Respondent is correct that he was not provided with an attorney until he signed the affidavit of parentage regarding the older child. As soon as this occurred, an attorney was appointed for him. Notably, respondent did not provide evidence of any services he sought out before signing the affidavit of parentage. And, respondent was provided services while not incarcerated (a period of approximately six months) and did not substantially comply with the services. He did not, in fact, even keep in contact with the agency during this period.

Respondent also argues that incarceration alone is not ground for termination. While this is true, *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), as previously indicated the record contains legally admissible evidence other than respondent's incarceration to show that he did not provide proper care and custody and there was not a reasonable likelihood that he would provide proper care and custody within a reasonable time given the young ages of minor

children. The trial court thus did not clearly err when it terminated respondent's parental rights to the children pursuant to MCL 712A.19b(3)(g).

With regard to the children's best interests, respondent argues that a guardianship would have been a better solution for them. Respondent also points out that the children's maternal grandmother was being considered as a permanent placement, which would give the children's mother the opportunity to continue to have a relationship with them, but that placement of the children with their paternal grandmother was not seriously considered. Respondent did not raise the issue of a guardianship for the children at the termination hearing and never provided the names of any individuals who showed an interest in guardianship of the children. Although his mother did express an interest in the older child, she did not request placement of the child with her. The children were entitled to a consistent, safe, loving environment, free from substance abuse and criminality, so that they could grow and thrive. Respondent was unable to provide them with that. The trial court did not clearly err in determining that termination of respondent's parental rights was in their best interests.

Affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto